

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA

Plaintiff,

ANTHONY GARZIONE

Relator,

v.

PAE GOVERNMENT SERVICES, INC.
d/b/a PAE

Defendant.

Civil Action No.

1:15-cv-00833 (AJT/JFA)

MEMORANDUM IN OPPOSITION TO DEFENDANT’S MOTION TO DISMISS

Relator, Anthony Garzione, by counsel, respectfully submits this Memorandum in Opposition to Defendant PAE Government Services, Inc.’s (“PAE”) Motion to Dismiss Plaintiff’s complaint.

I. An Amended Complaint Supersedes The Original Complaint And PAE’s Pending Motion Must Be Denied As Moot.

On June 30, 2015, Garzione filed a complaint pursuant to Title VII of the Civil Rights Act of 1964 against his former employer PAE, alleging that PAE violated the Federal Civil False Claims Act’s fraud and retaliation prohibitions. PAE filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) and Rule 9(b) on November 17, 2015.

Federal Rule of Civil Procedure 15(a)(1)(B) permits a party to amend its complaint once as a matter of course so long as the amendment is made within twenty-one days of service of a responsive pleading or motion under Federal Rule 12(b). Fed. R. Civ. Proc. 15(a)(1)(B). A timely-filed amended pleading supersedes the original pleading, and motions directed at the

original pleading must be denied as moot. *Young v. City of Mount Ranier*, 238 F.3d 567, 573 (4th Cir. 2001). Here, Garzione will timely file an amended complaint as a matter of course and therefore – once that amended complaint is timely-filed – PAE’s pending motion to dismiss should be denied as moot.

III. Conclusion.

For the foregoing reasons, Plaintiff respectfully requests that this Court deny PAE’s pending motion to dismiss as moot.

Anthony Garzione

By Counsel

By: /s/
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 1, 2015, I filed the foregoing with the Clerk of Court using the Court’s CM/ECF system, which will send a notification of such filing to each counsel of record in this matter and by U.S. Mail, postage pre-paid on:

Richard W. Sponseller
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Respectfully Submitted,

/s/

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